



# Kim Hixson

STATE REPRESENTATIVE • WISCONSIN LEGISLATURE • 43RD ASSEMBLY DISTRICT  
CHAIR, COMMITTEE ON COLLEGES AND UNIVERSITIES  
*Serving parts of Rock, Walworth, Jefferson and Dane Counties*

## REP. KIM HIXSON'S TESTIMONY ON AB-367

Good morning, Chairwoman Toles and members of the Assembly Committee on Workforce Development. Thank you for the opportunity to testify on Assembly Bill 367, the Credit History Anti-Discrimination Bill.

This bill was inspired by a constituent of mine who you will hear from this morning. Due to his inability to acquire medical insurance and subsequent catastrophic health care bills, he has acquired significant debt, which has greatly damaged his credit. As a result of his unfortunate credit history, he has been repeatedly denied employment.

Like many Americans who have fallen on tough times, this individual has always been able and willing to work hard, but has been repeatedly denied the chance to prove himself due to his credit history. As a result of his inability to obtain a steady paycheck, his credit cannot improve, leading him down a continuous path of unemployment and greater debt. AB-367 will grant this individual – and others in similar positions – the opportunity to be considered for a job based on merit and not on credit history.

This bill does have an exemption that allows employers to use credit history as a deciding factor for a job application if the circumstances of an applicant's credit history are substantially related to the circumstances of a particular job or related activity. Some organizations have expressed concerns about the lack of specificity in this exemption and I know that you, Madam Chair, have expressed some concern as to whether this exemption would provide some companies with too great of an opportunity to circumvent this bill's legislative intent. I want you to know that I am willing to work with members of the committee and organizations with vested interests in the scope of this legislation to find common ground.

Contrary to the claims made by some organizations, there are no statistics that provide evidence that individuals with poor credit history are more likely to steal or defraud a company. No expert opinion that I have come across shows any indication of a correlation between credit history and job performance. I believe it is a dangerous assumption that those of us with poor credit history are more inclined to criminal activity.

This is the exact type of discrimination that AB-367 works to address. Poor credit history is a very real problem that will not soon go away.

Take, for example, a recent article from *The Janesville Gazette*, a newspaper that covers much of Rock County, which reports a *36 percent increase* in bankruptcy filings so far this year over last in the county. The assumption that hard-working persons caught in a bad economy pose a higher security risk insults these struggling families forced into bankruptcy but willing to put in the hours to dig themselves out of debt.

Equal opportunity laws are enacted to protect employees against similar prejudices. One only has to look to the recent past to find a time when employers freely discriminated against minorities based on ill-conceived presumptions of incompetence or higher likelihood of criminal activity. We can all agree that this type of stereotyping has no place in the work environment. It is in much the same way that equal opportunity law protects against discrimination based on race, age and sex that we must eliminate the free consideration of baseless beliefs on individuals with poor credit history during the hiring process.

I am sure that you have all spoken with constituents who are having difficulties finding a job. A recent *New York Times* article addresses the hardships that many job seekers with poor credit must confront. I have included a copy of this article for your review. This bill will eliminate an unfair and unnecessary burden on job seekers and provide a greater sense of fairness for all Wisconsin workers.

This committee is responsible for ensuring that members of Wisconsin's workforce are given a fair and legitimate opportunity to obtain employment, and this legislation helps to address that specific issue by removing an unnecessary hurdle that many job seekers must currently face. I look forward to working with Senator Taylor and committee members to make this legislation effective public policy. I would be happy to answer any questions that you may have about this legislation.

- **Sandra Baner, *The Janesville Gazette*  
August 23, 2009**

Despite its unique economic situation, Rock County isn't a bankruptcy island. For the first seven months of this year, personal bankruptcy filings were up 29 percent in U.S. Bankruptcy Court for the Western District of Wisconsin that covers Rock and all counties in the western half of the state.

Nationally, non-business filings for the six-month period ending June 30 were 35 percent above the first half of 2008, according to the American Bankruptcy Institute.

The total number of U.S. bankruptcies—business and non-business—filed during the first six months jumped 36 percent, and the number of total filings reached 711,550.

"The increase in filings through the first half of this year is a product of continued financial stresses weighing on both consumers and businesses," said Samuel Gerdano, the institute's executive director. "In this challenging economic environment, we expect bankruptcies to surge past 1.4 million by year end."

- **\$8,329** – Average credit card debt per household at the end of 2008-- \$8,329. (Source: Nilson Report, April 2009)
- **\$922.73 billion** – Americans' credit card debt at the end of 2008. (Source: Nilson Report, April 2009)
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**The New York Times**

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August 7, 2009

## Another Hurdle for the Jobless: Credit Inquiries

By **JONATHAN D. GLATER**

Digging out of debt keeps getting harder for the unemployed as more companies use detailed credit checks to screen job prospects.

Out of work since December, Juan Ochoa was delighted when a staffing firm recently responded to his posting on Hotjobs.com with an opening for a data entry clerk. Before he could do much more, though, the firm checked his credit history.

The interest vanished. There were too many collections claims against him, the firm said.

"I never knew that nowadays they were going to start pulling credit checks on you even before you go for an interview," said Mr. Ochoa, 46, who lost his job in December tracking inventory at a mining company in Santa Fe Springs, Calif. "Why would they need to pull a credit report? They'd need something like that if you were applying at a bank."

Once reserved for government jobs or payroll positions that could involve significant sums of money, credit checks are now fast, cheap and used for all manner of work. Employers, often winnowing a big pool of job applicants in days of nearly 10 percent unemployment, view the credit check as a valuable tool for assessing someone's judgment.

But job counselors worry that the practice of shunning those with poor credit may be unfair and trap the unemployed — who may be battling foreclosure, living off credit cards and confronting personal bankruptcy — in a financial death spiral: the worse their debts, the harder it is to get a job to pay them off.

"How do you get out from under it?" asked Matthew W. Finkin, a law professor at the University of Illinois, who fears that the unemployed and debt-ridden could form a luckless class. "You can't re-establish your credit if you can't get a job, and you can't get a job if you've got bad credit."

Others say that the credit check can be used to provide cover for discriminatory practices. Responding to complaints from constituents, lawmakers in a few states have recently proposed legislation that would restrict employers' use of credit checks. While some measures languish, Hawaii has just imposed new restraints.

Business executives say that they have an obligation to be diligent and to protect themselves from employees who may be unreliable, unwise or too susceptible to temptation to steal, and that credit checks are a help.

"If I see too many negative things coming up on a credit check, it's one of those things that raises a flag with

me,” said Anita Orozco, director of human resources at Sonneborn, a petrochemical company based in Mahwah, N.J. She added that while bad credit alone would not be a reason to deny someone a job, it might reveal poor judgment.

“If you see a history of bad decision-making, you don’t want that decision-making overflowing into your organization,” she said.

More than 40 percent of employers use credit checks at least sometimes, according to a 2004 survey by the Society for Human Resource Management, up from 25 percent in 1998. The share has almost certainly risen today, say career counselors.

“It has been an ongoing and increasing issue,” said Mollie de Rojas, district coordinator for the local operations of the Ohio Department of Job and Family Services.

Credit counselors, worker advocates and the unemployed contend that a credit check is not always relevant to hiring decisions.

“There’s no relationship between being a personal trainer making \$12 an hour” and having a good credit history, said Janet L. Newcomb, a career counselor in Huntington Beach, Calif. “People are being turned down for jobs on the basis of things that really have nothing to do with qualifications.”

That is the complaint of Kevin Palmer, 49, who for months lived at the same homeless shelter in Santa Ana, Calif., as Mr. Ochoa. After an interview that seemed to go well one day in June at a property management company, a manager walked him around the office the next day, introduced him to other employees and showed him an available desk.

A credit check later, the offer vanished.

It was “a glorified clerk’s job, taking homeowners’ complaints,” Mr. Palmer said of the opportunity, which paid about \$39,000 and could have gotten him back on his feet after losing his condominium to foreclosure and filing for bankruptcy.

Last month, he says he found a job at a property management company in San Francisco — a company that did not run a credit check on him.

It is generally legal to run credit checks on job applicants, but some states have restrictions. In Washington, which has perhaps the most stringent requirement, a candidate’s credit history must be substantially related to the job under a law that took effect in 2007.

Last month, lawmakers in Hawaii approved a measure that generally allows an employer to review a credit history only after making an offer and requires the credit check to be “directly related” to job qualifications.

In California, Gov. Arnold Schwarzenegger vetoed a similar law. (New York law requires a background check’s findings to be related to the job, but it addresses criminal records and does not mention credit checks.)

Lawmakers in Michigan and Ohio have proposed barring employers from using credit history in making

employment decisions.

"In my opinion, it's discrimination," said Representative Jon Switalski, the Democrat who proposed legislation in Michigan. "If you miss a few payments or you have medical debt, your skills as a pipefitter or an electrician don't diminish."

Courts have not been sympathetic to claims that discrimination is being cloaked in credit checks, said Angela Onwuachi-Willig, a law professor at the [University of Iowa](#). "At what point does the fact that someone lives in a particular neighborhood or someone has a bad credit score become a way of eliminating people for illegal grounds?" she asked rhetorically. "Basically, the courts don't protect against proxy discrimination."

Stuart J. Ishimaru, the acting chairman of the federal [Equal Employment Opportunity Commission](#), said the commission would probably issue guidance on the proper use of credit checks. Such guidance, though nonbinding, could offer some reassurance against lawsuits to employers who comply.

"It's something that intrigues us and worries us," Mr. Ishimaru said, adding that some job-related tests had led to discrimination claims in the past. "The question is, why do you use it? How is this a good screening device?"

Federal law requires employers to get the consent of job applicants before running credit checks, said Pamela Q. Devata, a lawyer in the Chicago office of Seyfarth Shaw.

And if they are considering denying someone a job based on a check, she said, "they have to notify the applicant." That is intended to give someone a chance to explain circumstances or spot erroneous information.

When the job market improves and fewer people are fighting for slots, credit histories may become less important, said Michael C. Lazarchick, a career counselor in Pleasantville, N.J. "But these are lean and mean times."

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- **Sandra Baner, *The Janesville Gazette***  
**August 23, 2009**

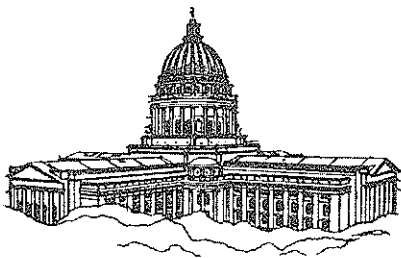
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# LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

## Testimony of Senator Lena C Taylor Assembly Committee on Workforce Development **Assembly 367 – Employment Discrimination Based on Credit History** Thursday, August 27, 2009

Honorable Chairwoman Toles and members,

Thank you for the opportunity to testify today on Assembly Bill 367 relating to: Employment Discrimination based on Credit History. This bill is the result of direct constituent contact received by Representative Hixson and myself which were cases where employment was denied due to poor credit.

Before I explain the workings of this bill and how it relates to the employment non-discrimination statutes, let me cover the importance of this legislation in light of the economic situation of this time. Across Wisconsin, foreclosures are mounting, automobile repossessions are occurring more and more regularly, and credit card debt still saddles the majority of the middle class economy. In fact credit card debt is one of the largest financial burdens in America. At the end of 2008, the average consumer household had over \$8,000 dollars of credit card debt amounting to over 922 billion dollars of debt across America. When one of these consumers makes a payment one day late should they be denied a job? This legislation is aimed at ensuring that credit history is **not** a hurdle to overcome in obtaining a job.

With the background, Representative Hixson and I put together Assembly Bill 367 which acknowledges that employment discrimination has occurred when a job applicant is required to allow access to a credit report in order to obtain employment. It is appropriate that this policy is placed in the same statute with cases of discrimination for employment based on age, race, sexual orientation, and conviction record. Accordingly, this bill allows exceptions to this prohibition to employers who show that the need for the credit report is substantially related to the activities and circumstances of the job. Some employers have expressed concern about the term "substantially related". As always I remain committed to open dialogue with those who will work with this policy on the front-lines, but will hold fast to the intent of this bill.

Credit history and credit problems take years to reverse. In the light of the job loss and the economy, it is our charge to ensure that opportunity for employment is equal and fair, and based on merit for the position, not credit history. I urge your support of this legislation.

Thank you.

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Madison, WI 53707-7882  
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Capitol: (608) 266-5810

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Toll-free: 1-888-326-6673  
Sen.Taylor@legis.wisconsin.gov  
www.SenatorTaylor.com

Committee on Judiciary, Corrections, Insurance,  
Campaign Finance Reform, and Housing (Chair)  
Committee on Justice Reinvestment  
Initiative Oversight (Chair)

Joint Committee on Finance  
Joint Committee for Review of Criminal Penalties (Co-Chair)  
Committee on Strengthening Wisconsin Families (Co-Chair)  
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Prepared for  
JOHN Q. CONSUMER  
Report number  
1234567890

Report date  
May 31, 2006  
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Page 1 of 6

Before contacting us, you should carefully review this report.

### Disputing information in your report

If you disagree with an item, you may dispute it. We will contact the source of the information and ask them to check their records. Because your report is updated often, contact us within 90 days from the date above.

For the fastest and easiest way to dispute information, visit:  
**[www.experian.com/disputes](http://www.experian.com/disputes)**

Or call 800 XXX XXXX. Dispute services are available 24 hours a day, seven days a week.

### Your personal credit report

#### **Potentially negative items or items for further review**

The most common items in this section are late payments, accounts that have been charged off or sent to collection, bankruptcies, liens, and judgments. It also may contain items that are not necessarily negative, but that a potential creditor might want to review more closely, such as an account that has been settled or transferred.

#### **Accounts in good standing**

Items display in this section when your creditor reports that you have satisfactorily met the terms of your agreements with them. Some creditors may not report consumer credit information to us, so all of your accounts may not be listed.

#### **History of your account balances**

Reports up to two years of your monthly balances on an account if reported by your creditor.

#### **Requests for your credit history**

We list anyone that has reviewed your credit information in the last two years.

#### **Personal information**

This information is reported to us by you, your creditors and other sources.

### Other Experian credit management tools

#### **Score report**

Order your Experian VantageScore<sup>SM</sup> report for only \$6 by calling 1 888 322 5583.

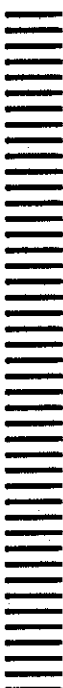
#### **Credit Manager**

Receive unlimited access to your credit report, score and other credit management tools at [www.creditexpert.com](http://www.creditexpert.com).

### About Experian

Experian collects and organizes information about you and your credit history from public records, your creditors and other reliable sources. By law, we cannot disclose certain medical information (relating to physical, mental, or behavioral health or condition). Although we do not generally collect such information, it could appear in the name of a data furnisher (i.e., "Cancer Center") that reports your payment history to us. If so, those names display in your report, but in reports to others they display only as "Medical Information Provider". Consumer statements included on your report at your request that contain medical information are disclosed to others.

JOHN Q CONSUMER  
123 Main Street  
Anytown, CA 90001-9999





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## Your statement(s)

At your request, we've included the following statement every time your credit report is requested.

ID Security Alert: Fraudulent applications may be submitted in my name or my identity may have been used without my consent to fraudulently obtain goods or services. Do not extend credit without first verifying the identity of the applicant. I can be reached at XXX-XXX-XXXXEXTXXXX. This Security Alert will be maintained for 90 days beginning MM-DD-YY.

## Potentially negative items or items for further review

This information is generally removed seven years from the initial missed payment that led to the delinquency. Missed payments and most public record items may remain on the credit report for up to seven years, except Chapters 7, 11 and 12 bankruptcies, which may remain for up to 10 years, and unpaid tax liens, which may remain for up to 15 years. A paid tax lien may remain for up to seven years. Transferred accounts that have not been past due remain up to 10 years after the date the account was transferred.

## Public records

<b>HOLLY CO DIST CT</b> 305 MAIN STREET HOLLY NJ 08060 No phone number available	Identification number B312P7659	Date filed Mar 1999	Responsibility Joint	Claim amount \$3,756	Status: civil claim judgment filed. Plaintiff: Dine Savings. This item was verified on Aug 2000 and remained unchanged.
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<b>BROWN TOWN HALL</b> 10 COURT ST BROWN, NJ 02809 No phone number available	Identification number BK443PG14	Date filed Nov 1997 Date resolved Oct 1998	Responsibility Joint	Claim amount \$57,786	Status: chapter 7 bankruptcy discharged. This item was verified on Aug 1997 and remained unchanged.
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## Credit items

<b>FIDELITY BK NA</b> 300 FIDELITY PLAZA NORTHSHORE NJ 08902 (732) 297-2235 Partial account number 46576000024....	Date opened Jun 1998 Reported since Jun 1998	Date of status Apr 1999 Last reported Apr 1999	Type Installment Terms 10 Months Monthly payment \$0	Responsibility Individual	Credit limit or original amount \$4,549 \$4,549	Recent balance \$4,549 as of Apr 1999	Status: charge off. \$4,549 written off in Apr 1999.
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<b>FIRST CREDIT</b> 890 MADISON STREET CLARVILLE TN 37040 (931) 645-0580 Partial account number 2057266377....	Date opened Jun 1994 Reported since Jun 1994	Date of status Feb 2004 Last reported Feb 2004	Type Revolving Monthly payment \$0	Responsibility Individual	Credit limit or original amount \$635 as of Feb 2004	Recent balance \$635 as of Feb 2004	Status: Current, was past due 30 days. Account history: 30 days as of Feb 1999
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## Potentially negative items continued

B.B. CREDIT	Date opened	Date of status	Type	Responsibility	Credit limit or original amount	Recent balance	Status: Debt re-included in chapter 7 bankruptcy, \$389 written off in Mar 2002
35 WASHINGTON ST DEDHAM MA 547631236 (715) 924-3603	Oct 1990 Reported since Apr 1995	Mar 2002 Last reported Mar 2002	Installment Terms 80 months Monthly payment \$34	Individual	\$8,500 High balance \$8,500	\$0 as of Mar 2000 Recent payment \$34	Account history: Collection as of Sep 2000 thru Jun 2001, 90 days as of Aug 2000, 60 days as of Nov 1999, Jun 2000 30 days as of Aug 1999, Jan 2000 and 2 other times.

Original creditor: Bally's Health Club/Personal Services.

This item was verified and updated on Jun 2001.

## Accounts in good standing

These items may stay on your credit report for as long as they are open. Once an account is closed or paid off it may continue to appear on your report for up to ten years.

### Credit items

FIRST CREDIT UNION	Date opened	Date of status	Type	Responsibility	Credit limit or original amount	Recent balance	Status: open/never late.
78 WASHINGTON LN LANEVILLE TX 76362 (940) 592-9999 Partial account number 60681...	Mar 1996 Reported since Mar 1996	Mar 2004 Last reported Mar 2004	Installment Terms 48 Months Monthly payment \$420	Individual	\$17,856 original amount	\$0 as of Mar 2004 Recent payment \$420	
AMERICA FINANCE CORP PO BOX 8633 COLLEY IL 60126 No phone number available Partial account number 6376001172....	Mar 1993 Reported since Jul 1993	Nov 1998 Last reported Nov 1998	Revolving Monthly payment \$400	Individual	\$0 High balance \$18,251	\$0 as of Nov 1998	Status: card reported lost or stolen.

000001234 F-000-00000-1503002





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Accounts in good standing continued

NATIONAL CREDIT CARD		Date opened	Date of status	Type	Responsibility	Credit limit or original amount	Recent balance	Status: open/never late.
100 THE PLAZA		Jun 1993	Apr 2004	Revolving	Joint with JANE	\$0 as of		
LANEVILLE NJ 08905		Reported since	Last reported	Monthly payment	CONSUMER	\$8,000	Mar 2004	
(732) 582-4587		Jun 1993	Apr 2004	\$0		High balance		
Partial account number						\$8,569		
420000638...								

NATIONAL CITY MORTGAGE		Date opened	Date of status	Type	Responsibility	Credit limit or original amount	Recent balance	Status: open/never late.
PO BOX 1819		Jun 1993	Jun 2003	Installment	Joint with JANE	\$0 as of		
ADAMS NJ 08902		Reported since	Last reported	Terms	CONSUMER	\$111,000	Apr 2004	
(732) 846-2275		Jun 1993	Jun 2003	30 Years				
Partial account number				Monthly payment				
433094...				\$0				

History of your account balances

If your creditor reported your account balances to us, we list them in this section as additional information about your account. Your balance history may also include your credit limit and high balance or the original loan amount for an installment loan.

AMERICA FINANCE CORP		Balance history											
Partial account number		Nov 1998:	\$0	Jul 1998:	\$4,329	Jun 1998:	\$0	May 1998:	\$0	Feb 1998:	\$250	Jan 1998:	\$0
6376001172...		Dec 1997:	\$2,951	Sep 1997:	\$3,451	Aug 1997:	\$4,251	May 1997:	\$4,561				
Between Jan 1994 and Nov 1998 your credit limit/high balance was unknown.													

NATIONAL CREDIT CARD		Balance history											
Partial account number		Mar 2004:	\$0	Apr 2004:	\$225	Nov 2003:	\$425	Sep 2003:	\$542	Jul 2003:	\$300	Jun 2003:	\$686
420000638...		Apr 2003:	\$1,400	Mar 2003:	\$2,500	Jan 2003:	\$2,774	Dec 2002:	\$599	Oct 2002:	\$873	Sep 2002:	\$1,413
Between Mar 2004 and Apr 2002 your credit limit/high balance was \$8,569.		May 2002:	\$1,765	Apr 2002:	\$2,387								





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## Record of requests for your credit history

We make your credit history available to your current and prospective creditors and employers as allowed by law. Experian may list these inquiries for up to two years so that you will have a record of the companies that accessed your credit information.

### Inquiries shared with others

The section below lists all of the companies that have reviewed your credit report as a result of an action you took, such as applying for credit or financing or as a result of a collection. The inquiries in this section are shared with companies that view your credit history.

ABC MORTGAGE	Date	Reason
64 MAPLE ROSEVILLE MD 02849 No phone number available	Oct 18, 2002	Real estate loan of \$214,000 on behalf of State Bank with 30 year repayment terms.

NATIONAL CREDIT UNION	Date	Reason
800 LAKESHORE DR BIRMINGHAM AL 35229 (205) 726-6733	Dec 19, 2003	Real estate loan of \$214,000 on behalf of State Bank with 30 year repayment terms.

### Inquiries shared only with you

You may not have initiated the following inquiries, so you may not recognize each source. We report these requests to you only as a record of activities, and we do not include any of these requests on credit reports to others.

We offer credit information about you to those with a permissible purpose, for example to:

- other creditors who want to offer you preapproved credit;
- an employer who wishes to extend an offer of employment;
- a potential investor in assessing the risk of a current obligation;
- Experian Consumer Assistance to process a report for you;
- your current creditors to monitor your accounts (date listed may reflect only the most recent request).

### These inquiries do not affect your credit score.

Experian	Date
PO BOX 2002 ALLEN TX 75013	Mar 2004

WORLD BANK	Date
4578 DRIVE NORTH YORKVILLE NY 03939 (800) 574-8441 On behalf of National Bank for insurance underwriting	Mar 2004, Dec 2003, Sep 2003, Jun 2003, Mar 2003, Dec 2002, Sep 2002, Jul 2002

FIDELITY BANK NA	Date
300 FIDELITY PLAZA NORTHSHORE NJ 08902 No phone number available	Jan 2004, Jul 2003, Jan 2003, Jul 2002

NATIONAL CREDIT CARD	Date
100 THE PLAZA LANEVILLE NJ 08905 (542) 355-6545 On behalf of First State Bank for social search	Jul 2003, Feb 2003

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## Personal information

The following information is reported to us **by you, your creditors and other sources**. Each source may report your personal information differently, which may result in variations of your name, address, Social Security number, etc. As part of our fraud protection efforts, a notice with additional information may appear.

### Names

JOHN Q CONSUMER

### Telephone numbers

XXX XXX XXXX

### Spouse's name

JANE

### Notices

The first Social Security number listed shows that credit was established before the number was issued.

### Addresses

These addresses are listed in no particular order and may include previous addresses where you received mail. The Address Identification number is how our system identifies the address. The geographical code shown with each address identifies the state, county, census tract, block group and Metropolitan Statistical Area associated with each address.

--- End of Report ---

If you disagree with information in your report you may dispute it at:  
**www.experian.com/disputes**

	Type of address	Geographical code
9904 MAX LANE FRISCO TX 75035 Address identification number 0125640508	Single family	0-192053-3-0

9904 MAS LANE FRISCO TX 75035 Address identification number 0163049870	Single family	0-224681-25-0
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904 MAX LANE FRISCO CA 75035 Address identification number 30164237462	Single family	0-9004-93-0
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### Social Security number variations

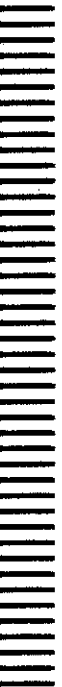
As a security precaution, we did not list the Social Security number that you provided when you contacted us. The numbers below are variations that have been reported to us.

000-00-0117  
000-00-0116  
000-00-1017

**Date of birth**  
June 6, 1956

**Driver's license number**  
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# WISCONSIN CIVIL JUSTICE COUNCIL, INC.

*Promoting Fairness and Equity in Wisconsin's Civil Justice System*

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TO: Members, Assembly on Workforce Development  
FROM: Andrew Cook, on behalf of the Wisconsin Civil Justice Council  
DATE: August 27, 2009  
RE: **OPPOSITION TO AB 367 – PROHIBITING THE USE OF CREDIT HISTORIES FOR EMPLOYMENT PURPOSES**

The Wisconsin Civil Justice Council, Inc. (WCJC) represents business interests on emerging civil litigation challenges before the Legislature. The WCJC's primary goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work.

### Assembly Bill 367

Assembly Bill 367 would prohibit employment discrimination based on credit history. The bill provides a narrow exception where circumstances of an individual's credit history are "substantially related to the circumstances of a particular job or licensed activity" and where the employment "depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating."

The WCJC opposes AB 367 because it would unnecessarily expose businesses to greater liability. As explained in greater detail below, the WCJC is particularly concerned that by amending Wisconsin's Fair Employment Law, AB 367 further exposes businesses to more lawsuits involving potentially significant punitive and compensatory damages. Moreover, the WCJC is concerned that AB 367 would impose another unnecessary limitation on Wisconsin businesses' ability to manage their workforce and compete in the current dismal economy.

### AB 367 Would Unnecessarily Expose Businesses to Greater Civil Liability under Wisconsin's Fair Employment Law

The Legislature recently enacted into law Senate Bill 20 (2009 Wisconsin Act 20). For the first time Act 20 adds punitive and compensatory damages for violations of the Wisconsin Fair Employment Law (WFEL). (Prior to enactment of Act 20, the WFEL allowed an employee who was discriminated against to seek reinstatement, back pay, attorney fees, and costs, but did not allow an employee to sue for punitive and compensatory damages.)

The WFEL, as recently amended by Act 20, now exposes businesses employing 16 to 99 employees up to \$50,000 in punitive and compensatory damages, plus court costs and attorney fees. Businesses with 101 to 200 employees are subjected up to \$100,000 in punitive and compensatory damages, plus court costs and attorney fees. Businesses with 201 to 300 employees are now subjected up to \$200,000 in punitive damages, and businesses employing more than 300 employees are subjected to punitive and compensatory damages totaling up to \$300,000 (in addition to court costs, back pay, and attorney fees).

Assembly Bill 367 would prohibit employment discrimination based on credit history under Wisconsin's WFEL. Thus, if AB 367 is enacted, an employer would be subjected to significant punitive and compensatory damages by simply running a credit check on a potential employee. As currently drafted, AB 367 proposes a broad protection that is different in kind from the other protected bases in the employment discrimination statute. Therefore, since credit reports do not contain information pertaining to a consumer's race, gender, religion, creed, color, or national origin, it is not clear why credit history should be protected under the WFEL.

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## **Current Law Provides Significant Protection for the Use of Credit Reports**

The federal Fair Credit Reporting Act (FCRA)<sup>1</sup> provides sufficient protections for job applicants in circumstances when a credit report is used for employment purposes. For example, if information from a credit report is used for employment purposes, the FCRA requires that the employer:

- Make a clear and conspicuous written disclosure to the applicant before the report is obtained, as specified, that a consumer report may be obtained;
- Obtain prior written authorization from the applicant;
- Certify to the credit reporting agency that the employer disclosed and obtained authorization to review the credit report and disclosed to the applicant that the information will not be used in violation of any federal or state equal-opportunity law or regulation, as specified; and
- Before taking an adverse action based on the credit report, provide the person with notice of the adverse decision and the name, address, and telephone number of the consumer reporting agency making the report.

In addition, the employer is required to give the employee a copy of the credit report, a summary of FCRA rights with information on how to dispute the contents of the report, and other documents as specified.

## **Legislation in Other States**

It is worth noting that only two other states (Washington and Hawaii) have passed similar legislation. (The California Legislature passed a bill prohibiting consumer credit reports for employment purposes, but was vetoed by the Governor.)

Washington state recently amended its Fair Credit Reporting Act.<sup>2</sup> Unlike AB 367, the bill did not amend the state's employment discrimination act. Moreover, the Washington law does not expose the employer to significant punitive and compensatory damages. Instead, an employer that violates the law is subjected to actual damages, plus costs and reasonable attorney fees. Only if there is willful failure to comply with the law would an employer be subject to the same damages as above, plus a monetary penalty of up to \$1,000 (significantly less than the potential \$300,000 in punitive and compensatory damages under current Wisconsin law).<sup>3</sup>

## **Conclusion**

In conclusion, the WCJC opposes AB 367 particularly because of the effect the bill will have on exposing already struggling Wisconsin businesses to greater civil liability. More exposure to civil litigation will drive up the cost of doing business making it that much more difficult for Wisconsin employers to compete during these extraordinarily trying economic times.

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<sup>1</sup> 15 U.S.C. § 1681 (see <http://www.law.cornell.edu/uscode/15/1681.html>)

<sup>2</sup> Chapter 93, Laws of 2007.

<sup>3</sup> Revised Code of Washington 19.182.150.

Members of the Workforce Development Committee.

There were many years when I did not have suitable health care or any due to the cost, change in employment or reasons such as preexisting conditions. My youngest son was having problems with seizures. There were many doctor office visits, testing, and medications. I believe the overall cost was close to \$25,000.00 for 1 year. At that time I did not have insurance. The hospitals did try to help but with many other things happening in life we fell behind and sent into collection.

For 2 years I did have a small business that failed in late 2008. In December 2008 and through February of this year I had been applying for what ever job I could find.

The jobs that I was applying for were automotive technician positions and what ever position I might have had a chance of getting. Most of those positions did not deal with handling of money.

At one interview a manager stated that my application was not completed due to the fact my "credit check form" was not filled out and signed.

When I did ask why the employer needed a credit check, The answer was "If your credit score is good you wont steal from me."

When I explained the credit situation the potential employer did not care. I asked what they would do if they found a person with good credit had been stealing from the company? That person said " people with good credit don't do that." On three (3) interviews or call backs the answer was the same, "bad credit, no job."

With those types of responses and treatment I lost self respect, confidence, and hope in finding a job. What I did gain was more debt, weight and depression.

There have been several cases in the last year that the media have been discussing why people with good credit have been stealing and letting homes, cars and many other items go because they can not afford them. But the credit scores are still good.

I am a hard working, honest, caring father, husband and person. I have with my wife managed to "get by" for food and other items with out good credit.

So please help remove one more "hurdle to jump" to get employment.

Thank you



# WMC

WISCONSIN'S BUSINESS VOICE SINCE 1911

TO: Members of the Assembly Workforce Development Committee

FROM: John Metcalf, Director, Human Resources Policy

DATE: August 27, 2009

RE: Opposition to Assembly Bill 367

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## **Background**

Current state law prohibits discrimination in employment a variety of bases including discrimination because of arrest record, includes discrimination on the basis of arrest or conviction record, except when employment depends on the bondability of the individual. Further, discrimination because of conviction record does not include refusing to employ an individual who has been convicted of an offense the circumstances of which substantially relate to the circumstances of the particular.

## **2009-2010 Session Legislation**

This bill prohibits employment discrimination based on credit history. The bill specifies that employment discrimination because of credit history includes an employer, labor organization, employment agency, licensing agency, or other person requesting an applicant, employee, member, licensee, or any other individual, on an application form or otherwise, to authorize that person to procure the individual's credit history, except that it is not employment discrimination to request that authorization: 1) if the circumstances of an individual's credit history are substantially related to the circumstances of a particular job or licensed activity; or 2) if employment, membership, or licensing depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating. The bill also specifies that it is not employment discrimination because of credit history to refuse to employ, admit, or license, or to bar or terminate from employment, membership, or licensing, any individual if: 1) the circumstances of an individual's credit history are substantially related to the circumstances of the particular job; or 2) if the individual is not bondable when bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

Under the bill, "credit history" means information provided in a consumer report under the federal Fair Credit Reporting Act (FCRA), which defines "consumer report" as any written, oral, or other communication by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used as a factor in establishing the individual's eligibility for credit, insurance, employment, or any other purpose allowed under federal law.

The FCRA further defines "consumer reporting agency" as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on individuals for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

## **WMC Position Oppose**

This bill will create unnecessary administrative complexities and legal uncertainty for businesses seeking to check the credit history of job applicants. Without knowing the credit history of an applicant it will be difficult to determine whether the applicants' credit history status substantially relates to the job. Federal law simply requires applicants to be notified that a credit history report is part of the job screening process for employment, rather than a prohibition on credit history review as proposed in this legislation.

## SURVEY

# CEOs Select Best, Worst States for Job Growth and Business

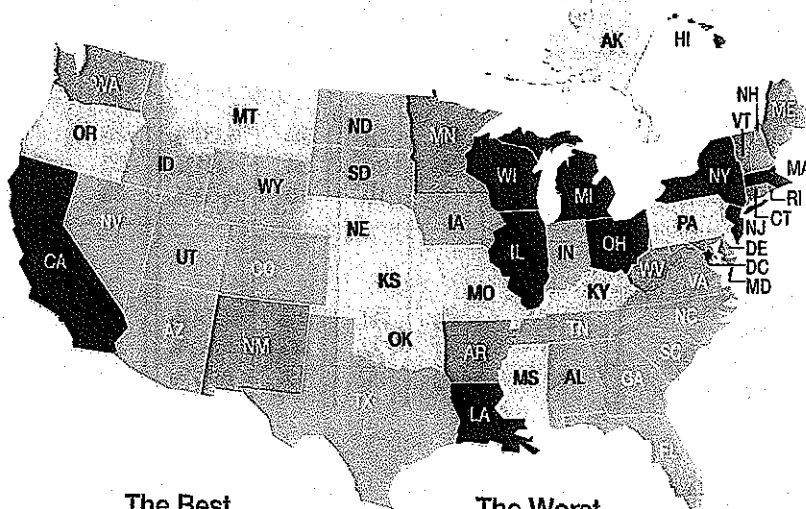
IN ITS FIFTH ANNUAL SURVEY, CE asked 543 CEOs to evaluate their states on a broad range of issues, including regulation, tax policies, education, quality of living and infrastructure. In addition, CEOs were also asked to grade each state based on the following criteria: 1) Taxation & Regulation, 2) Workforce Quality, and 3) Living Environment.

Once again, this year, the same states that took the bottom five spots over the past few years preserved their rankings for the most part. For the fourth year in a row, California and New York were ranked the worst and second worst state to do business in, respectively. Michigan was ranked third from the bottom for the second year in a row. The only difference in the bottom five was a flip in the worst fourth and fifth states, as New Jersey took over from Massachusetts as the fourth worst state.

Since 2005, CE has surveyed business leaders to rate their states and those in which they have operations with a view to whether each state is receptive to business operation and formation. Unfortunately, those states with the worst records continue to practice the same policies, that alienate businesses. As the economic downturn worsens and unemployment rises one would think some states would rethink their punitive tax and regulatory structure, not to mention their unionization policies if they want to turn the page and attract new businesses and capital to their area.

## The Best and Worst States to Do Business in the U.S. in 2009

Worst Not Good Neutral Good Best



### The Best

2009	2008	State
1	1	Texas
2	3	North Carolina
3	10	Florida
4	7	Georgia
5	6	Tennessee

### The Worst

2009	2008	State
51	51	California
50	50	New York
49	49	Michigan
48	47	New Jersey
47	48	Massachusetts

Coincidentally, all the bottom three states, California, New York and Michigan, also report some of the nation's highest unemployment rates—10.1 percent, 7.6 percent and 11.6 percent, respectively, as of January (most recent data available). This compares to a national average of 7.6 percent in the same month (the national unemployment rate reached 8.1 percent in February).

Expressing the prevalent attitude

among CEOs, one CEO said, "Michigan and California literally need to do a 180 if they are ever to become competitive again. California has huge advantages with its size, quality of work force, particularly in high tech, as well as the quality of life and climate advantages of the state. However, it is an absolute regulatory and tax disaster, as is Michigan."

As states put on an intense competition to attract business and invest-

# CEO CHRONICLES

## CEO CONFIDENCE INDEX

States	Average Position Change Per Year	Rank		GDP Growth Rank, Growth Rate (8-yr. avg.)		Employment Rank, Unemployment Rate		Taxation & Regulation	Work Force Quality	Living Environment & Infrastructure
		'09	'08							
<b>Best States</b>										
Texas	N/C	1	1	7	8.19%	19	5.7%	A-	B+	B+
North Carolina	-1	2	3	10	7.18%	44	7.9%	B+	B+	A-
Florida	-7	3	10	15	6.55%	39	7.3%	B+	B-	B+
<b>Worst States</b>										
California	N/C	51	51	20	6.06%	48	8.4%	D	B-	B-
New York	N/C	50	50	11	7.16%	25	6.1%	D	B-	C-
Michigan	N/C	49	49	51	1.70%	51	9.6%	F	C+	C
<b>Hot States</b> (Greatest Rank Increase)										
Mississippi	15	30	45	33	5.00%	38	7.2%	F	C+	C
Pennsylvania	10	29	39	34	4.91%	25	6.1%	C	B-	B
Florida	7	3	10	15	6.55%	39	7.3%	B+	B-	B+
<b>Cold States</b> (Greatest Rank Decrease)										
Ohio	-11	45	34	49	3.24%	39	7.3%	C-	B-	B-
Minnesota	-10	32	22	39	4.50%	31	6.4%	C	B+	B+
Washington	-10	40	30	12	7.12%	31	6.4%	C	B+	B+

ment in this tough economic environment, the Best & Worst States survey saw a flurry of activity in the top ranks with the entry of three new states into the top five: Florida, Georgia and Tennessee. Tennessee, for example, enjoys one of the lowest cost of living indexes in

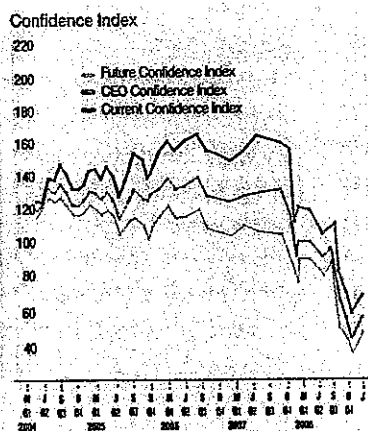
the U.S. California and New York rank among the highest. Texas maintained its #1 spot in the ranking for the fourth year in a row, as North Carolina, Florida, Georgia and Tennessee all jumped up in ranks, taking the #2, 3, 4 and 5 spots, respectively.

"Texas and the Carolinas are great for business," said one CEO. "South Carolina's Research Authority is exemplary in terms of creating new economic growth and Texas is strategically centered, has low taxes and outstanding demographics."

As a testament to this statement, in contrast to much of the nation, in fiscal 2008, Texas' gross state product grew by 4.2 percent, compared to 1.9 percent for the national economy.

If there is one state where business leaders are agog at the anti-growth actions of its government it is California. Ten years ago the state budget strained at the seams at \$85 billion. This rose to \$100 billion under Gray Davis and is approaching \$130 billion under Gov. Arnold Schwarzenegger. During this time the Golden State experienced a net outmigration of people and businesses. Seemingly oblivious to economic reality, last year the Democratic-controlled legislature proposed to raise California's income tax rate to 12 percent, the highest in the nation. ▲

For complete results regarding the confidence of public- and private-company CEOs, please visit our full report at [www.chiefexecutive.net](http://www.chiefexecutive.net).




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## Special Report

**Table: The Best States For Business**

Kurt Badenhausen, 07.31.08, 6:00 AM ET

OVERALL RANK	2007 RANK	STATE	BUSINESS COSTS RANK <sup>1</sup>	LABOR RANK <sup>2</sup>	REGULATORY ENVIRONMENT RANK <sup>3</sup>	ECONOMIC CLIMATE RANK <sup>4</sup>	GROWTH PROSPECTS OF LIFE RANK <sup>5</sup>	QUALITY RANK <sup>6</sup>	POPULATION	GROSS STATE PRODUCT (\$BIL)	FIVE-YEAR CHANGE (%)	GOVERNOR
1	1	Virginia	20	7	1	6	26	6	7,747,500	326	3.8	Tim Kaine
2	2	Utah	11	10	19	9	12	8	2,665,300	87	4.8	Jon Huntsman
3	5	Washington	28	2	6	7	2	25	6,509,100	261	3.4	Chris Gregoire
4	3	North Carolina	4	14	2	21	11	34	9,162,300	333	3.4	Michael Easley
5	15	Georgia	23	6	5	10	6	31	9,652,200	343	3.1	Sonny Perdue
6	8	Colorado	35	1	22	14	1	12	4,901,400	204	3.0	Bill Ritter
7	6	Idaho	10	15	29	5	27	15	1,511,400	46	5.4	C.L. Otter
8	7	Florida	34	5	18	1	5	33	18,321,700	625	4.7	Charlie Crist
9	4	Texas	25	24	13	11	4	27	24,064,400	894	3.3	Rick Perry
10	17	Nebraska	13	28	12	25	23	9	1,780,600	66	2.9	David Heineman
11	10	Minnesota	31	7	20	35	21	4	5,218,800	218	2.6	Tim Pawlenty
12	11	Delaware	3	17	27	33	24	29	870,400	52	3.8	Ruth Ann Minner
13	9	North Dakota	8	30	13	22	36	26	641,400	22	3.6	John Hoeven
14	12	Maryland	40	9	26	16	15	14	5,635,500	226	3.2	Martin O'Malley
15	26	New Mexico	9	21	30	18	10	50	1,986,000	65	4.7	Bill Richardson
16	28	Oregon	24	3	41	17	13	36	3,774,100	144	4.5	Ted Kulongoski
17	13	Tennessee	5	36	11	29	38	39	6,189,500	212	3.0	Phil Bredesen
18	18	Arizona	32	22	38	3	3	41	6,408,200	213	5.0	Janet Napolitano
19	22	Nevada	26	29	34	2	8	47	2,598,500	102	5.8	Jim Gibbons
20	14	New Hampshire	41	4	44	36	9	5	1,317,300	50	2.4	John Lynch
21	20	Kansas	30	19	9	43	31	24	2,790,200	97	2.5	Kathleen Sebelius
22	24	Iowa	12	39	22	23	48	13	2,995,900	108	3.2	Chet Culver
23	25	South Dakota	1	32	46	15	41	22	798,900	29	2.7	Mike Rounds
24	42	Montana	21	18	47	8	19	40	964,600	27	4.1	Brian Schweitzer
25	27	Indiana	6	43	15	40	39	23	6,367,800	220	2.3	Mitchell Daniels
26	30	Oklahoma	19	40	8	28	33	37	3,629,900	108	3.0	Brad Henry
27	37	Hawaii	47	10	36	4	22	30	1,285,200	51	4.4	Linda Lingle
28	35	Alabama	22	42	17	31	7	42	4,647,600	141	3.6	Robert Riley
29	23	South Carolina	27	33	3	41	20	43	4,434,800	131	2.6	Mark Sanford
30	16	Missouri	15	41	6	44	45	21	5,894,400	199	2.1	Matt Blunt
31	29	Wyoming	2	38	48	12	27	38	526,300	20	1.9	Dave Freudenthal
32	21	Arkansas	7	45	25	27	18	48	2,844,800	80	3.0	Mike Beebe
33	31	Connecticut	45	13	41	24	29	3	3,504,500	181	2.7	M. Jodi Rell
34	19	New Jersey	48	20	40	20	32	1	8,699,000	397	2.1	Jon Corzine
35	40	Illinois	36	27	28	37	25	18	12,893,500	521	2.3	Rod Blagojevich
36	36	Massachusetts	46	16	24	45	40	2	6,457,600	307	2.2	Deval Patrick
36	32	Vermont	43	12	33	31	44	10	621,600	22	2.9	Jim Douglas
38	33	New York	49	31	21	19	37	17	19,314,800	917	3.0	David Paterson
39	38	Ohio	29	47	10	47	47	11	11,470,100	403	1.5	Ted Strickland
40	34	California	50	25	45	12	14	28	36,736,500	1,557	3.7	Arnold Schwarzenegger

41	39	Pennsylvania	38	34	31	34	42	7	12,450,500	443	1.9	Edward Rendell
42	43	Mississippi	16	48	16	49	35	46	2,926,500	72	2.1	Haley Barbour
43	44	Wisconsin	37	37	37	26	46	16	5,612,800	200	2.1	Jim Doyle
44	41	Kentucky	17	46	35	42	33	35	4,261,100	129	2.2	Steven Beshear
45	45	Rhode Island	42	35	49	30	16	20	1,056,700	39	2.4	Don Carlieri
46	48	Maine	44	26	32	39	43	19	1,319,800	41	2.2	John Baldacci
47	46	Michigan	39	44	4	46	49	32	10,057,100	341	0.2	Jennifer Granholm
48	47	Alaska	33	23	39	47	30	44	686,900	30	1.1	Sarah Palin
49	49	Louisiana	18	50	43	50	17	49	4,308,500	145	2.3	Bobby Jindal
50	50	West Virginia	14	49	50	38	50	45	1,813,800	46	1.5	Joe Manchin III

1 Index based on cost of labor, energy and taxes.

2 Measures educational attainment, net migration and projected population growth.

3 Measures regulatory and tort climate, incentives, transportation and bond ratings.

4 Reflects job, income and gross state product growth as well as unemployment and presence of big companies.

5 Reflects projected job, income and gross state product growth as well as business openings/closings and venture capital investments.

6 Index of schools, health, crime, cost of living and poverty rates.

Sources: Moody's Economy.com; Pollina Corporate Real Estate; Pacific Research Institute; Tax Foundation; Sperling's Best Places; Census Bureau; SBA; FBI; Dept. of Education.